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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MULLEN, THOMAS J

ART UNIT	PAPER NUMBER
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2632

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/764,007	Applicant(s) MAITIN ET AL.	
	Examiner Thomas J. Mullen, Jr.	Art Unit 2632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/04, 10/3/05</u> | 6) <input type="checkbox"/> Other: ____. |

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1. The drawings are objected to because the relationship between the various blocks in Fig. 1 and the various blocks in Fig. 2 is unclear, i.e. it is unclear if detector 102 (Fig. 1) and detection module 202 (Fig. 2) are the same element; if deactivation system 122 (Fig. 1) and deactivation module 204 (Fig. 2) are the same element; and, if alarm system 114 (Fig. 1) corresponds to all of notification module 206, speaker 208 and LED 210 (Fig. 2). Note that, although Fig. 2 as a whole is described as an "EAS Deactivation System", it is designated by a different reference numeral (200) than the "Deactivation System" block in Fig. 1 (122).

Likewise, the relationship between the "Interrogation Zone 108" in Fig. 1 and the "detection" (304), "deactivation" (302) and "expanded" (306) zones in Fig. 3 is unclear (e.g., it is unclear if "expanded" zone 306 in Fig. 3 would be somewhere in the vicinity of antenna pedestals 104,106 in Fig. 1).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 1, lines 3-4 and claim 8, line 4, the context in which the second perimeter is "less than" the first perimeter is unclear from the language of the claim; i.e., it is unclear whether the second perimeter is "less than" the first perimeter as to a particular dimension/area of coverage, or the second perimeter is "less than" the first perimeter in some other respect. Assuming that "less than" refers to the "particular dimension/area of coverage" of each perimeter, it is unclear whether "less than" implies anything about the claimed "perimeters" having one area of coverage entirely included within the other; having overlapping areas of coverage; or having completely distinct areas of coverage.

In claims 1 and 8, line 4 in each claim, the particular area of coverage intended by the "expanded zone between said first and second perimeters" is unclear; since the relationship between the first and second "perimeters" is unclear as discussed above, the area characterized as "between said first and second perimeters" cannot be determined.

In claim 18, it is unclear if the "marker detector" is all of, a part of, or distinct from, the "detection module" recited in claim 8, line 2. Likewise, it is unclear if the "interrogation zone" (claim 18) is all of, a part of, or distinct from, the "detection zone" recited in claim 8, line 2.

In claim 18, it is unclear if the "alarm system" is all of, a part of, or distinct from, the "notification module" recited in claim 8, lines 6-9. Likewise, it is unclear if the produced "alarm" (claim 18) is the same as, or different than, the "audible and visual notification" recited in claim 8, line 7.

In claim 19, it is unclear if the "electronic article surveillance marker" is the same element as, or a different element than, the "electronic article surveillance marker" recited in claim 8, last 4 lines.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al (US 2003/1007).

See in Lee et al, Figs. 1, 10 and 18-20, and paragraphs 0088-0094. Lee et al teaches an apparatus and method for creating and using detection and deactivation zones to detect and/or deactivate an EAS "marker", note automatic (or self-) checkout system 2, for a retail establishment; security (EAS) tag 300, which is "placed on certain items" in the retail establishment (paragraph 0016); security tag deactivator/detector controller 301 (paragraph 0066); detection module 312; and deactivation modules 308,310. As best shown in Fig. 20 and described in paragraphs 0091-0092, detection module 312 generates a "detection zone" having a "first perimeter" (note the number and height of the arrows in Fig. 20 which are associated with element 312, and which implicitly define a zone of detection having an implicit perimeter), while either of deactivation modules 308,310 generates a "deactivation zone" having a "second perimeter" (note the number and height of the arrows in Fig. 20 which are associated with either of elements 308,310, and which implicitly define a zone of deactivation having an implicit perimeter, a dimension of which is specified in paragraph 0091); the difference in "perimeters" between the detection zone (at 312) and the deactivation zone (at 308 or 310) implicitly defines an "expanded zone"--note the area between the dashed lines in Fig. 20. The detection module 312 detects an EAS tag 300 within the "expanded zone" when the tag is in a particular "state"; in response to detecting the tag 300, the detection module 312 "command(s) the system to notify store personnel" about an activated/deactivated state of the tag (paragraph 0092). In other words, the Lee et al "system" (whose major components are shown in Figs. 1, 10 and 19) implicitly includes a "notification module" connected to the detection module 312 and deactivation modules 308,310, for receiving a "notification signal" therefrom (note the system component(s) shown in Fig. 19 which are disposed below the surface used to support the detection module 312 and deactivation modules 308,310, to which system component(s) each of the modules 308,310,312 are connected, and which component(s) implicitly communicate with at least some of the various operative elements shown in Figs. 1 and 10).

Regarding claim 2, the particular "state" of the EAS tag 300 detected by detection module 312 is an "active" state (i.e., where the tag has not been deactivated by the deactivation modules 308,310), and the "notif(ication)" to store personnel is inherently a "first" notification signal.

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 8-11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al.

As to claims 3 and 8-9, Lee et al fails to specify the nature of the "notif(ication)" that is provided to store personnel, i.e. audio, visual, etc.; however, the use of "audio signal(s)" (such as a speaker) and/or "visual signal(s)" (such as an LED) to alert one or more parties of a particular detected condition is notoriously old and well known in the art. One skilled in the art would have recognized that the "notif(ication)" taught by Lee et al can take a variety of forms, of which an audible signal and/or a visual signal would be the most common. Therefore, it would have been obvious for the "notif(ication)" of Lee et al to be in the form of "audio signal(s)" (such as a speaker) and/or "visual signal(s)" (such as an LED), as claimed.

As to claim 10, see the discussion of claim 2 above.

As to claim 11, see the discussion of claims 3 and 8-9 above.

As to claim 18, note "antenna" 306 in Figs. 18A-18C, and paragraph 0089; the antenna 306 "interrogates" a tag 300 with a resonant frequency signal, and the tag response is received by "(d)etection circuitry" associated with antenna 306. Although this arrangement is described with respect to the process of deactivating the tag (i.e., at deactivation modules 308,310), it is clearly inherent that detection module 312 would likewise use a "set of (one or more) antennas" to form an "interrogation zone", and a "detector" per se to detect a response from an EAS marker (tag), such response being "process(ed)" so as to produce an "alarm" as appropriate (i.e. the "notification" discussed in paragraph 4 above with respect to claim 1, and discussed immediately above with respect to claims 3 and 8-9).

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8. Claims 4-7, 12-17 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Bettine (US 6400273), Plonsky et al (US 5341125), Martin (US 5917412) and Close (US 4565996) are cited to further show the state of the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM


Thomas J. Mullen, Jr.
Primary Examiner
Art Unit 2632